

Rule Revisions and SSM Updates

Why are we revising Chapter 173-400 WAC?

The Department of Ecology (Ecology) was identified by the United States Environmental Protection Agency (EPA) as one of 36 state agencies that have requirements in their State Implementation Plan (SIP) that are inadequate and must be revised. More specifically, the requirements related to the excess emissions that occur during periods of startup, shutdown, or malfunction (SSM) must be updated to comply with the EPA's final action related to the SSM SIP call and the EPA's 2015 SSM policy.

In addition, Ecology received requests from stakeholders to update a number of requirements in Chapter 173-400 WAC. Due to the short schedule, Ecology proposes to make only a few of those changes at this time. Ecology hopes to make more stakeholder requested changes in the future when we're not restricted by the EPA-established deadline.

What is the EPA-established deadline?

As required by the federal Clean Air Act, the EPA gave Ecology and the other agencies identified in the SIP call 18 months to adopt rules, propose these as a revision to the SIP, and submit the revisions to the EPA for approval and inclusion in the SIP. The 18-month schedule started on May 22, 2015, so the deadline is November 22, 2016.

What happens if Ecology does not meet the deadline?

If Ecology fails to meet the deadline:

- Certain new and modified sources in nonattainment areas could be subject to additional requirements under the federal Clean Air Act.
- States could experience restrictions on federal highway funding.
- The EPA could also impose a Federal Implementation Plan which would supersede the State Implementation Plan.

Were other Washington agencies identified?

Yes. In addition to the Department of Ecology, the following agencies were identified by the United States Environmental Protection Agency.

- The Energy Facility Site Evaluation Council (EFSEC)
- The Southwest Clean Air Agency

What are the main requirements of the EPA's final action?

The EPA identified the following problems that must be corrected.

- Rule language that has the effect of barring enforcement by the EPA or a citizen under the federal Clean Air Act

- Automatic exemptions from emission limits for specific activities (for example, startups, shutdowns, and maintenance)
- Rule language which broadly allows air agency directors to decide that a violation had not occurred or was not subject to penalty
- “Affirmative defense” rule language that is inconsistent with the federal Clean Air Act

What provisions in Chapter 173-400 WAC must be revised?

Currently, the SIP and Chapter 173-400 WAC have exemptions to emission limits for excess emissions that occur during emission unit startup, shutdown, and maintenance events.

These must be revised because the federal Clean Air Act requires that emission limits in SIPs apply continuously during all modes of operation. In other words, excess emissions that occur during these planned and predicted periods, like startup, shutdown, or maintenance, should be treated as violations. At this time, staff identified the following sections in Chapter 173-400 WAC that must be revised to comply with the EPA’s 2015 SSM policy.

- WAC 173-400-040, -050, -060, -070, -107, -108, and -109

Do the SSM provisions currently in Chapter 173-400 WAC still apply?

Yes. The existing SSM provisions remain in place until Ecology adopts revisions to the rule that replace the inadequate provisions.

Will other Ecology regulations need to be revised as a result of this SIP call?

Yes. Chapter 173-405 WAC, which addresses emissions from specific equipment at Kraft pulp mills, will need to be slightly revised in the future, or a request must be submitted to the EPA to remove the specific text in the rule from the SIP.

What is a SIP call?

A “SIP call” is a mechanism in the federal Clean Air Act (section 110(k)(5)) that is used for correcting SIPs that the EPA Administrator finds to be substantially inadequate to meet the requirements of the federal Clean Air Act.

What led to the EPA final action related to the SSM SIP call?

Two separate but equally important cases have resulted in the EPA final action related to SSM SIP call.

The Sierra Club found that some EPA-approved SIPs contained requirements for excess emissions during periods of startup, shutdown, or malfunction did not meet the federal Clean Air Act requirements.

In 2011, they petitioned the EPA and in 2013, the EPA proposed to deny the Sierra Club’s petition related to affirmative defenses, but to grant the request that 36 state agencies revise SIPs that contain inadequate SSM provisions.

In a separate court action related to the affirmative defense language in a New Source Performance Standard regulation, the United States Court of Appeals for the District of Columbia decided in 2014 that affirmative defense provisions (as contained in the appealed rule) would limit the discretion of a federal judge to assign penalties for violations of the federal Clean Air Act are illegal.

This led to the EPA revising their SSM policy and releasing a subsequent proposal requiring the 36 state agencies (45 statewide and local jurisdictions and no tribal areas) to revise affirmative defense provisions as well as requirements related to excess emissions occurring during startup, shutdown, or malfunction events.

Where can I get more information?

To learn more about State Implementation Plan or SIPs, go to the following website.

<http://www.ecy.wa.gov/programs/air/sips/plans/plans.htm>

To learn more about the EPA's 2015 SSM policy and the EPA's final action, go to the following websites.

<http://www.gpo.gov/fdsys/granule/FR-2015-06-12/2015-12905>

<http://www.epa.gov/air/urbanair/sipstatus/emissions.html>

To view the federal Clean Air Act, go to the following website.

<http://www.epa.gov/air/caa/text.html>

To view the federal Clean Air Act Section 110(k)(5), go to the following website.

<https://www.law.cornell.edu/uscode/text/42/7410>

To follow this rulemaking, sign up for email updates by going to the following website.

<http://listserv.wa.gov/cgi-bin/wa?SUBED1=ECY-AQ-RULE-AND-SIP-UPDATES&A=1>

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